

# **CFMEU**

**WESTERN AUSTRALIA**

**SUBMISSION TO THE LEGISLATIVE ASSEMBLY OF  
WESTERN AUSTRALIA INQUIRY INTO SEXUAL HARASSMENT OF  
WOMEN IN THE FIFO MINING INDUSTRY**

**AUGUST 2021**

## INTRODUCTION

- A. The Construction, Forestry, Maritime, Mining and Energy Union, Construction and General Division, WA Divisional Branch (CFMEU) is the principal union representing workers and their industrial interests in the construction industry in Western Australia, including thousands of workers that are required to fly-in fly-out (FIFO) for their employment.
- B. FIFO work arrangements are a key feature of the Western Australian employment landscape. While FIFO work practices are now a common employment condition in WA, it is important to acknowledge that FIFO emerged when resource companies started to favour the work practice as a mechanism to meet labour requirements in a more cost-effective manner.<sup>1</sup>
- C. The CFMEU continues to be concerned about the impact of FIFO employment on workers and their families. With the rapid growth of the resource economy, particularly in Western Australia, increasingly our members have no other option than to pursue employment through FIFO. This reality creates serious challenges, particularly for women members who already face significant barriers to enter the male dominated mining industry and who can face discrimination and sexual harassment on a daily basis.
- D. Currently, there is very little specific regulation to address issues of discrimination and sexual harassment in the FIFO workplace. For FIFO to be used in a successful and beneficial manner it requires a strong focus on prioritising the health, safety and wellbeing of workers.
- E. Whilst FIFO is now the preferred labour force model for those working in the resource industry, FIFO workers are consistently characterised as a homogenous group. It is important to make the distinction between the construction workforce, which regularly mobilises and demobilises on projects for the duration of the construction phase or shutdown and maintenance phase and the production or operations workforce, that are employed on a more permanent basis for the production phase of the project.<sup>2</sup>
- F. In our experience the outcomes in a range of areas, including systems to deal with risk factors associated with sexual harassment and discrimination, are consistently better for those individuals working directly for a mining company in a production phase of a mining project as opposed to during the construction phase.
- G. In appreciating that FIFO work arrangements are an important component of the WA employment landscape, it is important that they not be 'normalised'. This is to say that workers should be given greater choice based on an individual's circumstances, particularly for women, who overwhelmingly deal with the instances of sexual harassment and discrimination in the mining industry. Importantly, FIFO employment is more than a form of employment; it encapsulates a lifestyle that brings with it a unique set of challenges for the worker, their family and the community at large.<sup>3</sup>
- H. The CFMEU along with the broader union movement takes a zero tolerance approach to sexual harassment and discrimination in the workplace. The provision of a safe, healthy and dignified workplace is a fundamental right for any worker and of absolute importance to our Union and our broader membership.
- I. In this regard, perhaps the most significant source of information with respect to sexual harassment and discrimination in the workplace is the Australian Human Rights Commission's (AHRC) recent report entitled the Respect@Work: Sexual Harassment National Inquiry Report (2020) (The Respect@Work Report).
- J. The Respect@Work Report is extensive. The Respect@Work Report examines a number of key issues associated with sexual harassment and discrimination within male dominated industries

*"He followed me in the ute one day and wouldn't leave it alone. I was on edge every single day at work."*

1. Construction, Forestry, Mining and Energy Union, Construction and General Division, WA Divisional Branch, (2015) 'Supplementary Submission to the Education and Health Standing Committee Inquiry into the mental health impacts of FIFO Work arrangements'. Pg 3 2. Ibid. Pg 3 3. Ibid. Pg 3

(such as the construction and mining industries), whilst specifically exploring the contributing factors associated with the prevalence of sexual harassment within isolated and remote workplaces. Importantly, the Respect@Work Report makes a number of key recommendations which are considered by this submission and must be considered by the Inquiry. We support the findings of the Respect@Work Report and the recommendations therein.

## 1. SEXUAL HARASSMENT IN FIFO WORKPLACES

- A. Whilst there is clear evidence that sexual discrimination and harassment occurs across every single mine site across Western Australia, this is not a problem unique to the mining industry. It is fundamentally a societal issue. It is, however, a problem that gets amplified wherever any group of people are taken away from the connection and influence of their community and their family.
- B. By way of example, other industries and organisations such as branches of the military in our country and around the world are currently having to face this and accept responsibility for the active management of the culture and environment of their organisations around this issue.
- C. Despite mining companies like BHP and Rio Tinto making statements of commitment about the need to tackle sexual harassment, the truth is they have been doing exactly the opposite of accepting responsibility in this area for a long time now.
- D. Mining companies have been putting profits before people by actively undermining the stability and quality of what little sense of community exists on their mine sites for the last decade in order secure profit margins.
- E. Workplace settings play a critical role. We continue to have instances of hot bedding and motelling - where workers shuffle around from one bed to another from week to week or even day to day so the mining company or mining contractor can minimise the number of beds they have to provide. The result is that

people do not know who is in the tiny rooms beside them from night to night anymore.

- F. Broadly speaking, there is no sense of community at all. Often, people are alone amongst a crowd. This is exactly the environment that we know undermines protective factors that would otherwise prevent antisocial or abusive behaviours.
- G. There is a general view that workers in the Western Australian iron ore industry have it easy. It is nonsense. It is essentially a frontier life, and like any other point in history where people lived on the edge of a society, it can be brutal.
- H. Workers there are undertaking various forms of work consistently for 12 hours a day for 21 days (sometimes over a 28 period) with no rest day, no time with family and friends and no respite. The schedules and rosters that the big mining companies set in order to ensure production is overwhelming.
- I. In this environment, discrimination and workplace sexual harassment has a profound impact on individuals, including:
1. Negative impacts on health and wellbeing.
  2. Negative impact on employment (both day-to-day and in relation to career progression).
  3. Significant financial consequences.<sup>4</sup>
- J. Every individual in any workplace is responsible for their own actions and anyone who sexually assaults someone must be fully held to account. However, the mining companies cannot just dismiss their own responsibility to provide a healthy and safe work

*"I was 'the girl' when I was work on a job in Newman. I was already isolated. Then I was even more isolated and singled out by my own workmates".*

4. Australian Human Rights Commission, (2020), 'Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces', accessible at: <https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>. Pg 24

environment for their workers, both directly employed or employed through one of their contractors – a community and culture on their mine sites that is fair, sustainable and connected.

K. Lots of time, energy and money now needs to be spent to make sure that the living standards in these camps, the work schedules, the social structures, and ultimately the site culture are conducive to a happy and safe working life for all. In this context, we have concerns as to whether any commentary by industry or government will seriously address this side of the problem, because it would mean mining companies investing more money back into the workplace culture and living conditions of workers.

L. The sad truth is that, within an economic jurisdiction where one industry is so dominant and a government is so reliant on income from that one sector, we are sceptical that any real reform will occur. Instead, measures will be discussed and implemented that allow companies to put a set of prescriptive protocols in place that they can point to in order to minimise any legal exposure caused by sexual harassment and sexual assault on their mine sites, without actually doing the much more difficult work of actually preventing that sexual harassment and assault.

M. Simply banning homelessness does not stop homelessness. Simply banning alcohol consumption does not stop alcohol abuse. And by the same token, simply ‘banning’ sexual harassment will not stop sexual harassment.

*“It’s the way the guys speak to you.”*

N. Prohibition and control is unlikely to reduce instances of sexual harassment and discrimination within the Western Australian FIFO sector. The only thing that will do that is addressing the issues of isolation, depression, disconnection, distance, physical and mental fatigue, loneliness, anger, failing relationships, failing friendships, and a ‘frontier’ culture that actively

promotes the notion that things are different ‘up North’ and that the same level of respect, dignity, compassion and tolerance cannot be afforded to people in that environment.

O. We see little appetite for actually dealing with those deeper issues of developing and maintaining the formal and informal social and cultural institutions on remote mine sites that we know work within the broader society to protect against discrimination, violence and antisocial behaviour.

## RECOMMENDATION 1

**The State Government work with the Australian Government and other State and Territory Governments to implement ALL the recommendations in the AHRC’s Rest@Work Report and provide a joint funded package to ensure their implementation (see Recommendation 1 of the Respect@Work Report).**

## 2. MINING AND MINING ASSOCIATED CONSTRUCTION IS MALE DOMINATED

A. The Respect@Work Report found that there is an established body of evidence demonstrating that male-dominated workplaces have a higher prevalence of sexual harassment.<sup>5</sup> These characteristics include:

1. An unequal gender ratio (a higher proportion of men than women in the workplace).
2. Senior leadership that is predominantly male.
3. Performance of jobs by women that are considered ‘atypical’ for women.<sup>6</sup>

B. Interestingly research has indicated that even where workplaces are not male-dominated in gender ratio or senior leadership, they may still be male-dominated in their work practices, culture, or behavioural expectations.<sup>7</sup> This seems to point to a broader structural problem present in our society and work cultures.

C. The Respect@Work Report also considered that

male dominance in a workplace is not only related to gender ratio, but to broader issues about male control of decision-making and leadership within the organisation.<sup>8</sup>

D. A recent report on women in the construction industry found that the following features of the industry impact on women workers:<sup>9</sup>

1. Masculine norms and practices;
2. Tolerance for sexism;
3. The exclusionary nature of the industry;
4. Women are required to prove their capabilities; and
5. Long hours and little accommodation for social or caring roles outside of the industry.<sup>10</sup>

*"I was in tears. It wasn't an isolated incident. Not including me in group events. Had to put in a direct complaint. If something happens and we make a complaint, then often it's the female taken of the job but the male is not."*

E. Importantly, these factors exist in many workplaces that are not dominated by FIFO employment. So while they represent significant issues in and of themselves, their presence is clearly not sufficient to explain the high prevalence of sexual harassment and assault in the FIFO industry that led to this inquiry. What makes FIFO unique?

F. The experience of the workplace organisers and officials of our Union is that the masculine norms that are so prevalent in many manual labouring professions are exacerbated within the FIFO sector by a related but unique 'frontier' culture - the notion that in what is universally acknowledged to be a brutal work environment, the normal social practices can't possibly apply. This finds expression in many ways but is normally articulated - by both men and women - as contempt for the 'softness' of cultural practices and

institutions that promote mutual care and respect.

*"I was even seen differently by my female colleagues because I put a complaint in."*

G. CFMEU acknowledge that work has been done by some individuals, businesses, and institutions to combat this frontier culture. However, in our experience, it is still actively encouraged by many within the mining industry to justify work schedules, living conditions, and amenities that would never, ever be tolerated in other work environments.

H. In this respect, CFMEU believe that dirty urine stained portable toilets, uncontrolled dust, 12 hour working days, hotbedding, scarcity of sanitary products, poor food quality, and all the other problems of a frontier workplace directly inform this frontier culture that openly asserts that the normal level of respect and accommodation of other individuals is misplaced in the FIFO workplace.

## RECOMMENDATION

**That industry and the State Government commit to ensuring the provision of accommodation, services, facilities and other workplace conditions within the FIFO context commensurate to those conditions that all other workers would rightly expect.**

## 3. ACCOMMODATION CONDITIONS

A. Standards of accommodation, in particular motelling, which is the practice of being reallocated a different room each time a worker attends a site to commence a swing, disrupts the community fabric and social cohesiveness of accommodation camps. This is particularly important when evaluating FIFO workers access to peer support structures when mobilised on site and is especially critical in reducing the risks associated with sexual discrimination and harassment.

B. We continue to have instances of hotbedding and motelling in the industry, which was explored and defined by the Final Report of the Education and Health Standing Committee report entitled, The Impact of FIFO Work Practices on Mental Health (2015) as:

*“Occupant A is allocated an accommodation room for their roster cycle. When they are on ‘R&R’ that room is allocated to Occupant B. When Occupant A returns to the accommodation village they are allocated a different room for the roster cycle.”*

C. When mobilised on site, FIFO workers reside in temporary accommodation camps that are provided by their employer. The temporary camps typically consist of a cluster of prefabricated, transportable dongas. In the past, FIFO workers have retained the same donga, while mobilised on a resource construction project. However, motelling has become increasingly common on resource construction projects in Western Australia. This environment increases isolation amongst the workforce, destroys cohesiveness and may contribute to anti-social behaviour, poor culture and an increased risk of sexual discrimination and harassment within the FIFO workforce.

*“I was terrified with no support. You’re an easy target.”*

D. This is consistent with the findings of the Respect@ Work Report where the Commission found that “the workplace culture in some remote worksites with transient workers, such as mining camps, could contribute to sexual harassment occurring.”

E. This is in circumstances where FIFO workers have an overriding reluctance to seek external mental health support and a general reluctance to report instances of sexual harassment and discrimination, particularly when there are limited external reporting structures available.

F. The CFMEU has consistently argued for a review of motelling practices on sites throughout Western

Australia. It is important to note that women members have directly raised concerns with motelling disrupting the sense of security provided by knowing your neighbours.

G. Finally, accommodation camps are not considered to be workplaces for the purposes of the Occupational Safety and Health Act 1984 (OSH ACT) which means there is a more limited legal and regulatory framework to deal with instances of sexual harassment and discrimination.

## RECOMMENDATION

**That State and where applicable local governments establish a set of standards which excludes motelling and double bunking and provides adequate leisure facilities and a dignified environment for workers living in camps.**

## 4. CLASSIFICATION OF CAMPS AS A WORKPLACE

A. The control that employers exercise over employees residing in FIFO camps can further the isolation that many workers experience which in turn can lead to greater stress and further place individuals at risk of sexual harassment and discrimination. In particular, some employers have utilised various characteristics of FIFO and weaknesses in the Fair Work Act 2009 (FW Act) and OSH Act to skirt occupational health and safety requirements in FIFO camps and impede union access to workers.

*“You don’t put in a formal complaint or you’ll get the sack. For sure.”*

B. A union’s primary function is to represent its members’ interests and the FW Act and the OSH Act provides unions official’s with access to fulfil this role in their workplaces. However, worker accommodation villages are not classified as a workplace under the FW Act and/or the OSH Act and therefore the employer

or operator of the camp is not required to facilitate access to the accommodation camps. This makes it very difficult for FIFO workers to have proper access to union representation at a time and place of their choosing.

*“In a male dominated industry, it’s the female who gets punished.”*

- C. Practically, workers feel unable to have discussions with their union representative without feeling intimidated and without the presence of others. This is particularly the case in the context of sexual harassment where it’s critical that vulnerable workers can obtain the necessary support when and where they need it without fear of observation or external influence. Privacy and confidentiality is critical.
- D. Further, there is a confusion over which agency has jurisdictional responsibility for accommodation camps between Worksafe and the Department of Mines, Industry, Regulation and Safety (DMIRS), which leaves workers vulnerable. The CFMEU is concerned that neither regulator is taking responsibility for accommodation camps and that the confusion caused by multiple regulatory jurisdictions may result in a lack of accountability.
- E. Remote worksites are by no means the only environments in our society that exhibit factors like these that result in a higher than normal level of control over a group of individuals at the same time as providing a lower level of open public scrutiny. Our experience of those other environments should raise our collective concern about the dangers of that combination in the FIFO context.

## RECOMMENDATION

**That the OSH Act be amended to include accommodation camps as workplaces to enable better Union inspectorial access, Worksafe access, and other regulatory inspection of accommodation camps.**

## 5. THE CONTRACTOR MODEL

- A. The mining industry (particularly the construction mining sector) in Western Australia has changed over the years – especially when it comes to procurement of contracts and labour hire. It used to be dominated by large mining companies that had their own employed construction workforce. Now, it is a highly complex ‘pyramid’ of contractual relationships, otherwise known as a hierarchical system of contracting, which involves the mining company as head contractor with multiple layers of smaller contractors underneath. This in essence, allows the mining company to shift liability to smaller contractors.
- B. Pyramid contracting occurs when a subcontractor engages another subcontractor to perform part of the work within their respective contract. In some scenarios, a mining subcontractor can contract out 2-3 times within a block of work or contract out to a number of contractors for the same block of work.
- C. The practice of pyramid contracting leads to poor outcomes for workers, including for health safety and wellbeing of the workforce. Whilst there are significant sums of money associated with exploration, mining and exportation of commodities, the reality is subcontractors further down the contracting chain don’t normally have the same capacity, systems and protocols to deal with and manage the instances and risks associated with sexual harassment in the workplace or accommodation camps as the mining company itself.

*“He was one of my supervisors.”*

- D. The emphasis is based on ‘getting the job done’ with the assessment of health and safety systems, particularly dealing with sexual harassment and discrimination in the workplace as a secondary factor. This is particularly the case during the construction phase of a project or in the shutdown and maintenance sector, subcontractors working for miners are forced to cut costs to meet the contract

requirements of the lead mining contractor or the mining company itself.

- E. This is a consequence of private companies being forced to compete on price for work, without proper weight given to their employment practices, record on dealing with instances of sexual harassment and misconduct. Whilst the mining company may have the requisite policies or procedures in place, the question as to whether these structures and support networks flow down the contracting chain is questionable.

## 6. LABOUR HIRE AND INSECURE WORK

- A. Another outcome of the hierarchical system of contracting has been the growth of labour on hire arrangements in the construction and mining industry. Practically, what this means for workers is that their jobs are inherently insecure. Labour hire workers are not afforded the same protections as full time employees under industrial relations legislation due to their work being casual. This means a significant imbalance in power between the employee and the employer exists and the protections available to these workers is limited.

*“Everything that went wrong on site was my fault. As soon as I made a mistake it was like they were on it like bees on honey. Even the tiniest thing. And that goes on everywhere.”*

- B. Our members have clearly and consistently stated to us that when their work is insecure, they are less likely to report instances of discrimination and sexual harassment, feel able to have discussions about instances of discrimination and sexual harassment and talk to their union representative, support networks or co-workers without being intimidated for fear of losing their employment.
- C. A number of workers in the industry are employed

through labour hire for years on end. This is concerning in the context of discrimination and sexual harassment particularly when understanding the associated risk factors of sexual harassment and discrimination in the FIFO workplace.

## 7. ISOLATION & ROSTERS

- A. In Western Australia, the resource boom and associated construction work has paved the way for workplace arrangements that differ from the normal practice of travelling.
- B. While sexual harassment occurs across Australian workplaces, some work environments may increase the risk of sexual harassment.<sup>11</sup> It is crucial to recognise that there is a substantial variance among FIFO rosters throughout Western Australia. There is significant disparity between roster cycles for contractors compared to mine production workers.
- C. In the CFMEU's experience, there is a direct correlation between the length of time spent on site (and time at home) and workers' experience of social isolation. It follows that roster length is a key variable that could directly undermine connection to family and other known protective factors for harassment and other antisocial behaviours. This, therefore, is a critical factor in evaluating the protections and risks associated with sexual harassment and discrimination in FIFO worksites.

## RECOMMENDATION

**That the State Government mandate through legislation lower compression roster durations.**

## 8. SELF-REGULATION

- A. Historically, there have been limited regulations or parameters placed on companies utilising FIFO practices in Western Australia, particularly in accommodation camps. For FIFO to be used in a successful and beneficial manner, it requires a strong focus on prioritising the health and safety of workers.

11. Australian Human Rights Commission, (2020), 'Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces', accessible at: <https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>. Pg 153.

B. Currently, companies are largely left to self-regulate FIFO practices. The incentive to do this appropriately and reduce the risk of discrimination and sexual harassment, often conflicts with their interest in focusing on profit margins and project completion dates.

*“Because I stand up for myself, I’m the problem.”*

C. We are of the view that there is genuine need to implement more stringent regulation of FIFO arrangements in Western Australia to guard against risk associated with sexual harassment and discrimination in the mining industry.

## 9. THE FIFO CODE OF PRACTICE

A. Whilst a good initiative, the FIFO Mental Health Code of Practice (2019) (The FIFO Code of Practice) fails to adequately provide sufficient guidance on what constitutes best practice when engaging and managing a FIFO workforce and particularly in managing the factors and risks associated with sexual harassment and discrimination. The key reasons we

have taken this position are due to the FIFO Code of Practice not having regard (certainly in sufficient detail) to the following issues:

1. The general mental health and well being of FIFO workers in the mining industry;
2. Psychosocial health; and
3. The risk factors associated with sexual harassment and discrimination.

B. In addition, the FIFO Code of Practice is currently a voluntary scheme. The code itself does not have the force of the law. It is there not delivering for FIFO workers and there is no consistent take up of its guidance measures. The FIFO Code of Practice requires the force of legislation.

## RECOMMENDATION

**The State Government legislate the FIFO Code of Practice.**



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